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SUPREME COURT, U. S.

Supreme Court of the United States

OCTOBER TERM, 1949.

No. 271.

ALCOA STEAMSHIP COMPANY,

Petitioner,

vs.

UNITED STATES OF AMERICA,

Respondent.

MOTION OF WATERMAN STEAMSHIP CORPORATION
FOR LEAVE TO FILE BRIEF AS *AMICUS CURIAE*,
AND BRIEF OF *AMICUS CURIAE*.

L. DE GROVE POTTER,
*Counsel for Waterman Steamship Corporation
as Amicus Curiae.*

Supreme Court of the United States

OCTOBER TERM, 1949.

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ALCOA STEAMSHIP COMPANY,

Petitioner,

vs.

UNITED STATES OF AMERICA,

Respondent.

MOTION FOR LEAVE TO FILE BRIEF AS
AMICUS CURIAE.

The undersigned, as counsel for Waterman Steamship Corporation, respectfully moves this Honorable Court for leave to file the accompanying brief in this case as *Amicus Curiae* in support of the Petition for *Certiorari*.

L. DE GROVE POTTER,
Counsel for Waterman Steamship
Corporation as *Amicus Curiae*.

Supreme Court of the United States

OCTOBER TERM, 1949.

No. 271.

ALCOA STEAMSHIP COMPANY,

Petitioner,

vs.

UNITED STATES OF AMERICA,

Respondent.

BRIEF OF WATERMAN STEAMSHIP CORPORATION
AS *AMICUS CURIAE* IN SUPPORT OF THE
PETITION FOR *CERTIORARI*.

STATEMENT.

Waterman Steamship Corporation has a serious and two-fold interest in the question presented. It has brought a suit against the United States in the District Court for the District of Alabama, which suit includes a claim against the Government for freight in the sum of \$141,443 which the Government has failed to pay for a voyage which terminated short of original destination. Although the Government has not yet answered in that suit nor finally stated its position, it is believed that it is awaiting final determination of the question raised in the present suit. Furthermore, as carrier and operator of ocean vessels which have

and are expected to continue to carry government cargo under the government form of bill of lading, it is important to the Waterman Steamship Corporation that the question here involved be decided so that it can determine what freight charges and insurance coverage are required.

THE QUESTION PRESENTED.

The question presented is whether the terms of the Government form of bill of lading, use of which is necessary in the carriage of Government cargo by water, exempt the Government from the liability for freight which private shippers are under when carriage of the cargo to destination is prevented by causes for which the carrier is not responsible. The determination of the question depends on the proper interpretation of the Government form of bill of lading read in conjunction with the customary provision appearing in commercial bills of lading that freight is earned on shipment of the goods, such customary provisions being incorporated by reference into the Government bill of lading as part of the contract of carriage.

ADDITIONAL REASONS FOR GRANTING CERTIORARI.

The Petition points out the importance of the question, the errors of the Court below and the serious effects which will result if the decision below is allowed to stand, with all of which Waterman is in full accord. However, it is desired to submit the following additional reasons for granting *Certiorari*:

1. The question presented is not confined to cases where Government cargo has been lost due to enemy action as in the present case. The question will arise in every case

where a carrier is prevented from delivering Government cargo at the port of destination by Act of God, peril of the seas, unavoidable breakdown or any other reason for which the carrier is not responsible.

Indeed, although the Government's position is not yet fully known, the question may be raised in the suit now pending against it by Waterman in Alabama. In that case the Government shipped a cargo of potatoes on the S.S. *George Chaffey* from Beaumont, Texas for carriage to Bremen, Germany. During the voyage the vessel put into New York for repairs after which it was ready to continue the voyage to the original port of destination. However, some of the potatoes had spoiled and the Government sold the cargo and required that it be discharged thus causing the termination of the voyage at New York. Nevertheless it has failed to pay freight after due demand and presentation of proper documents and vouchers. Presumably it has failed to do so for the reasons asserted in defense of the present case.

2. For many years the Government has considered that under documents such as here involved it was liable for freight even though the carrier was unable to deliver the cargo. 24 Dec. Comp. Treas. 707 (1918) and 21 Comp. Gen. 909 at 913 (1942). The Government's interpretation over these many years should be strongly persuasive of what it intended and understood to be the true meaning of the bill of lading of which it was the author. At any rate never before has the Government contended that it was on any different footing with respect to liability for freight than any private shipper, although admittedly the method of payment may be different. Having now reversed its position, unless the question is finally settled by this Court, it

will continue to arise in every case where there is a non-delivery at port of destination of Government shipments. Meantime, both the carrier and the Government will be uncertain as to where the risk of freight rests. Carriers in particular are and will be faced with the serious problem of determining proper and adequate freight rates and insurance coverage.

3. Furthermore, the decision of the Court below is not controlling on the Courts of other circuits where it is understood similar cases are pending. Accordingly, future applications undoubtedly will be made to this Court for review of the question unless it is settled now.

CONCLUSION.

It is respectfully submitted that for these additional reasons *Certiorari* should be granted. No attempt is here made to argue the legal questions involved because Waterman is in accord with the arguments set forth in the Petition and Petitioner's accompanying brief.

Respectfully submitted,

" L. DE GROVE POTTER,
Counsel for Waterman Steamship Corporation,
as *Amicus Curiae*.